

**(2016) 01 KL CK 0114**  
**In the High Court Of Kerala**  
**Case No : B.A. No. 256 of 2016**

Suresh A.P.

APPELLANT

Vs

Circle Inspector of Police and Others

RESPONDENT

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**Date of Decision :** 28-01-2016

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 438, Section 439, Section 482  
Explosive Substances Act, 1908 — Section 3, Section 5  
Penal Code, 1860 (IPC) — Section 143, Section 147, Section 148, Section 149, Section 302, Section 307, S

**Citation :** (2016) 1 KHC 468

**Hon'ble Judges :** Sunil Thomas, J.

**Bench :** Single Bench

**Advocate :** P.V. Kunhikrishnan and P.V. Anoop, for the Appellant; Tom Jose Padinjarekkara, Additional Director General of Prosecution, for the Respondent

**Final Decision :** Partly Allowed

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## Judgement

Sunil Thomas, J.—1. The petitioner is the 18th accused in Crime No. 236/1994 of Kuttiadi Police Station for offences punishable under Sections 143, 147, 148, 341, 326, 307, 302 read with Section 149 IPC and Section 3 and 5 of Explosive Substances Act. The case was registered in the year 1994, originally against 15 persons. It is stated that, the petitioner was included in the array of accused by a subsequent report. According to the petitioner, he left India in 1996 in search of a job. In the meanwhile final report was filed and he was not aware of the pendency of the present proceedings. After committal proceedings all accused except the petitioner herein faced the trial. It is stated that all the 26 accused were convicted by the Sessions Court and subsequently in the appeal, the conviction of accused Nos. 2 onwards was set aside by this Court. It appears that the 1st accused died and his appeal got abated. He could not return because his passport was withheld by the employer and has now recently returned. According to him, he returned on an emergency certificate. He apprehends arrest in case he appears before the learned Magistrate and he seeks anticipatory bail.

2. The counsel for the petitioner relying on the decision reported in *Sundeep Kumar Bafna v. State of Maharashtra*, 2014 KHC 4190 : 2014 (2) KLT 809 (SC): 2014 (2) KHC SN 23 : 2014 (1) KLD 575: AIR 2014 SC 1745 : 2014 CriLJ 2245: (2014) 16 SCC 623. contended that being a sessions offence he apprehends that the learned Magistrate may not grant bail and sought for appropriate directions in the light of the decision above. The learned counsel also placed reliance on an unreported decision of this Court in Cri MC No. 3131/2015 wherein Bafna's case was followed.

3. Per contra, the learned Additional Director General of Prosecution submitted that since in the committal proceedings the petitioner herein was not present, the case was split up and it was included in the LP Register. Warrant was issued repeatedly and ultimately after Section 82 & 83, proceedings he was declared as absconding. In the above circumstances, the learned counsel placed reliance on the decisions of the Hon'ble Supreme Court in *Lavesh v. State (NCT of Delhi)*, 2012 KHC 4472 : 2012 (3) KLT876(SC) : 2012 (8) SCALE 303 : (2012)8 SCC 730 : 2013(115) Cut LT 354: (2012) 3 SCC (Cri) 1040 : 2013 (1) GujLR 553 and *State of Madhya Pradesh v. Pradeep Sharma*, 2013 KHC 4942 : 2014(1) KHC SN 10 : 2014(1)KLD 98 : 2013(14) SCALE 626 : 2014(1)KLT SN 1 : AIR 2014 SC 626 : (2014)2 SCC 171 wherein it was held that the grant of anticipatory bail cannot be extended to the case of a person who has not co-operated with the investigation and is declared as an absconder/proclaimed offender. It appears that Bafna's case was one in which the accused surrendered before the Court and sought application under Section 439 CrPC. The unreported decision relied on by the learned counsel was one in which Section 482 was invoked and not one under Section 438 CrPC.

Having regard to the entire facts and the fact that the matter has been pending since 2001 in LP Register, I feel that neither an anticipatory bail can be granted nor a direction given to the Magistrate touching upon the grant of reliefs. Hence I am not inclined to grant any reliefs. Bail application is accordingly dismissed.